84-1949

FILED
APR 30 1985
ALEXANDER L. STEVAS
CLERK

SUPREME COURT OF THE UNITED STATES
October Term, 1984

No. _____

ROBERT WOLF, M.D.; RICHARD STERTZ; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D.; JOHN McAVERY, M.D.; IRWIN WHEELER, M.D.; EDMOND ROSALES, M.D.; UCLA HOSPITAL AND CLINICS; AND DOES 1 through 40, INCLUSIVE,

Respondent,

vs.

RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased,

Petitioner.

PETITION FOR WRIT OF CERTIORARI SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

RONALD LAMONT
11734 Wilshire Blvd.
Apt. C-810
Los Angeles, CA 90025
(213) 473-3250

QUESTION PRESENTED

1. Did not the Appeals Court sanction a departure from the accepted and usual course of judicial proceedings by the Superior Court, which appeal concerns a discovery sanction order issued by the trial court on July 6, 1984. The order precludes plaintiff from offering any evidence at trial as to the areas or subjects addressed in Interrogatories 2, 3, 7, 9, 10, 11, 12, 13, 14 and 15. All answers to Interrogatories which have anything to do with damage claims or the complaint have been dismissed from use as evidence at trial.

It should be apparent to this Court that no further issues are to be resolved and this order of July 6, 1984 is a Final Judgment and thus denying Petitioner his 14th Amendment Rights?

CERTIFICATION AS TO INTERESTED PARTIES

Counsel for the Petitioner hereby certifies that there are no other parties of interest in the case at bar except those listed in the caption and their attorneys of record. These representatives are made to enable judges of the court to evaluate possible disqualifications or recusal.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984
No. _____

ROBERT WOLF, M.D.; RICHARD STERTZ; CHARLES R. MC ELROY, M.D.; MICHAEL BRODSKY, M.D.; JOHN MC AVERY, M.D.; ERWIN WHEELER, M.D.; EDMOND ROSALES, M.D.; UCLA HOSPITAL and CLINICS; and DOES 1 through 40, inclusive,

Respondent,

vs.

RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased,

Petitioner.

PETITION FOR WRIT OF CERTIORARI
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

This is a Petition for RONALD LAMONT for a Writ

of Certiorari to review the Dismissal of Appeal and granting the Motion to Dismiss the Appeal made by the District Court of Appeal of the State of California, Second Appellate District, on January 30, 1985. App. "A", denying the Petitioner's Appeal seeking a reversal and dismissal of the "Final Judgment" and minute order in its entirety, granting Respondent's Motion to Dismiss the Appeal against Petitioner's wrongful death suit for malpractice damages for forty-six million, eight hundred fifty thousand ($46,850,000.00), filed by the Superior Court of the State of California for the County of Los Angeles on May 12, 1978. The Appellate Court has so far sanctioned a departure from the accepted and usual course of Judicial Proceedings by the Superior Court, as to call for an exercise of this Court's Power of Supervision.

JURISDICTION

1. The Supreme Court already has jurisdiction as this is a direct Appeal from the decision of a three judge court.

2. The matter in controversy exceeds the "sum of value" of $15,000.00 exclusive of interest and costs.

3. This matter arises under the Constitutional Laws of the United States.

4. For the jurisdiction of this Court is invoked under:

28 U.S.C. §1253
28 U.S.C. §1254
28 U.S.C. §1331

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. **FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

2. Title 28 U.S.C. §1331
3. Title 28 U.S.C. §1253-1254

The foregoing statutes have been set forth in the Appendix attached hereto. App. "K".

STATEMENT OF THE CASE

The entire case was based on the facts which are as follows:

This is an action for wrongful death brought by the Petitioner as the only heir of the Decedent. This action was originally commenced by both Petitioner, Ronald Lamont, and his wife, Decedent Plaintiff Berniece P. Lamont while still living filed a complaint for a valid cause of action for medical malpractice on May 12, 1978.

2. On October 9, 1979, Berniece P. Lamont died eliminating her cause of action for medical malpractice for which she would have been entitled to damages for her pain and suffering.

3. Petitioner, Ronald Lamont, filed a Motion to Amend Complaint on November 10, 1980 to that of Wrongful Death.

4. The Motion to Amend was heard by The Honorable L. J. Rittenband, Judge, and the Motion was granted on January 16, 1981.

5. On February 18, 1981 the first amended complaint was filed changing the complaint to that of wrongful death. Petitioner Ronald Lamont did not have the background to draw up this document and sought and hired legal assistance in drawing up this document. This was the first and only time he had any legal assistance.

6. On March 18, 1981 attorneys for Respondents filed a Motion to Strike and a Demurrer to be heard on April 10, 1981.

7. On March 3, 1981, Petitioner Ronald Lamont filed opposition paper to Demurrer and Motion to Strike based upon same arguments as used against Opposition to Motion to Amend Complaint filed on January 9, 1981.

8. The motion was heard on April 10, 1981 by the Honorable L. J. Rittenband, Judge. The Demurrer was sustained without leave to amend.

9. An appeal was filed in the Court of Appeal, Second Appellate District and their ruling was filed on April 26, 1983 reversing the order issued by Laurence J. Rittenband, Judge of the Superior Court.

10. Respondents sent a set of Interrogatories to Petitioner Ronald Lamont on or about June 24, 1983. App. "J".

11. Petitioner sent answer to both the above Interrogatories on July 26, 1983. (App. "H") to Respondents.

12. Respondents filed a Motion to Compel Further Answers to Interrogatories Propounded to Petitioner and for sanctions on August 25, 1983.

13. Respondents' Motion was heard on October 14, 1983 and the Court ordered Petitioner Ronald Lamont to Answer Respondents' Interrogatories Numbers Eight, Nine, Ten, Eleven, Twelve, Thirteen,

Fourteen and Fifteen in spite of the fact that no Moving Papers were filed on these Interrogatories sent Petitioner a Notice of Motion and Motion to Dismiss Case No. WEC 53299.
sent Petitioner Notice of Motion and Motion to Dismiss Case No. WEC 53299.

15. On February 10, 1984 the Motion was heard by The Honorable L. J. Rittenband, Judge. The Court ordered the Petitioner's Action Dismissed unless further Answers were given within 60 days.

16. Petitioner sent further Answers to Respondents' Interrogatories on April 9, 1984 in compliance with the Court's order.

17. On April 13, 1984 Respondents sent Petitioner a letter requesting further Responses. They did not spell out their needs, they simply requested further Answers.

18. On May 27, 1984 Respondents sent Petitioner a Notice of Motion to Dismiss to be heard on June 29, 1984.

19. The motion was heard on June 29, 1984 by the Honorable L. J. Rittenband, Judge. The matter was taken under submission.

20. The Court ruled July 6, 1984 on the submitted matter that Respondent shall be precluded from offering any evidence on trial as to any of the areas or subjects addressed in Interrogatories 2, 3, 7, 9, 10, 11, 12, 13, 14 and 15.

21. Petitioner filed Notice of Appeal and Notice to Prepare Clerk's Transcript on August 3, 1984.

22. Court of Appeal gave Petitioner 30-day Notice on December 7, 1984 to submit Opening Brief (App. "D")

23. Respondents filed Motion to Dismiss Appeal on December 10, 1984 (App. "E")

24. Petitioner filed Opposition Papers to Motion to Dismiss Appeal on December 20, 1984.

25. Petitioner filed Appellant's Opening Brief on January 7, 1985. Respondents did not file a Respondents' Brief.

26. On January 30, 1985 the Court of Appeal ruled "Motion Granted, Appeal Dismissed".

27. Petitioner then contacted the Clerk at the California Supreme Court and asked for filing time for an appeal. He was told to go back to the Court of Appeal and ask when this decision would become final. Petitioner went back to the Appellate Court and the Clerk told him, due to the heavy backlog this will not be final until April 1, 1985. Petitioner went back to the California Supreme Court to file an Appeal and was informed that it was too late to file, but the only hope is the United States Supreme Court.

REASON WHY PETITION SHOULD BE GRANTED

Petitioner has complied with the court order and has answered Respondents' Interrogatories (App. "J") as completely as possible to the best of his

knowledge with the intention of giving Respondents sufficient data to enable them to truly evaluate the charges made and to examine evidence to support these charges against them. (App "A").

ARGUMENT

A.

APPELLANT COURT UPON EXAMINATION OF PETITIONER'S APPEAL, HAD BEFORE IT UNCONTRADICTED AND COMPELLING EVIDENCE IN SUPPORT THEREOF; ITS FAILURE TO GRANT THE APPEAL WAS A CLEAR ABUSE OF DISCRETION

The record reveals that on subject appeal, it was shown by uncontradicted evidence that:

1. The Appellant Court should have seen after examining the Interrogatories Propounded (App "J") and the Answers given by the Respondent (App "H") were appropriate and to the point. Furthermore, it should have been obvious that the lower court's ruling of July 7, 1984 entirely eliminated Respondent's Cause of Action and all claims for damages were dismissed.

2. The Appellant Court in a prior ruling in this case made their position clear:

Lamont v. Wolfe, 142 Cal.App.3d 357; Cal.Rptr. (April 1983).

> In this case the chief witnesses for the defense are the Defendants themselves, their agents and employees. The medical records of Berniece Lamont are in the custody of Defendants. By the time they were notified of Berniece Lamont's death, Defendants should already have taken the necessary steps to gather and preserve evidence bearing on the Lamont's claims of medical malpractice and Ronald Lamont's damages for loss of consortium. This evidence forms the core of the defense to the wrongful death action and defines Defendants' position on the amount of damages if liability is established.

Furthermore, Petitioner had sent Respondents copies of some of their own medical records verifying the massive brain damage to Berniece P. Lamont, deceased, cause by their malpractice.

3. Respondents have been employing discovery with the long range objective to bring about a dismissal by continually asking for further and further Answers to their Interrogatories until they reach a point where no further Answers by Petitioner were possible. They then voiced the lack of satisfaction and motioned the Court for further Answers. When Petitioner could not comply they asked the Court for a dismissal.

Deyo v. Kilbourne (1978) 149 Cal.Rptr. 449, 84 C.A.3d 771.

"Neither party may employ discovery rules with long range objective of trapping other party into imposing of sanctions, especially imposition of the most severe sanction".

No principle is more firmly established in our judicial system than the principle that judicial decisions shall be rendered in a manner consistent with the facts, notwithstanding that it was presented with uncontradicted evidence, the Appellant Court failed and refused to grant the Petitioner the Order for which he prayed. Such refusal, in light of the **uncontradicted and compelling evidence** submitted in support of Petitioner's Appeal constituted a clear abuse of the Appellant Court's decision.

B.

THE COURT OF APPEALS HAS RENDERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER COURT OF APPEALS ON THE SAME MATTER.

Prior decisions by this Court have expressed a different opinion than that used in this case dismissing the Petitioner's Appeal. As evidence in the rulings below:

Calif. Rules of Court, R. 29(a).

"(Grounds) A hearing in the Supreme Court after decision by a Court of Appeal will be ordered (1) where it appears necessary to secure uniformity of decision or the settlement of important questions of law. . ."

Muller v. Tanner (1969) 2 CA3d 438, 82 Cal.Rptr. 734.

An order, removing any cause of action alleged and leaving no issues to be determined, though designated a minute entry, is treated as a judgment of dismissal and as appealable under the law in effect at the time appeal was taken, where the order is in the form of a written order signed by the court and filed in the action.

Howe v. Key System Transit Co. (1926) 246 P. 39 198 C.525.

Question is affecting right of appeal from judgment is not what form of order or judgment may be but what is its legal effect.

Walters v. Plumas County (App. 1976) 132 Cal.Rptr. 174

Even though "order granting dismissal to complaint" was not appealable under this section and even though appeal was technically premature since no judgment was entered in case, where order was intended to be a final disposition of the controversy and was signed by the trial court. Order would be treated as a final judgment by Court of Appeal on such courts own motion.

The Appellant Court in this case to be consistent with other decisions of this court should have given Petitioner, Ronald Lamont, the sought after relief.

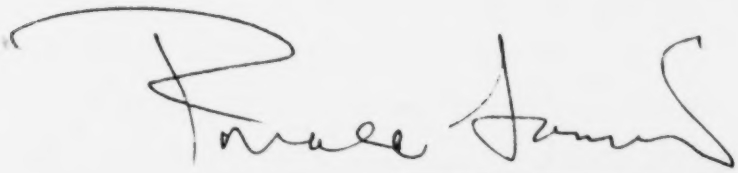
CONCLUSION

This Petition is sought on the grounds that by denying the requested relief, the Court of Appeal, Second District, ignored the willful violation by the Appeal Court of the Petitioner's 14th Amendment rights, guaranteed by the Constitution of the United States of America.

For the above mentioned reasons Petitioner, RONALD LAMONT, respectfully requests that this Honorable Court grant the instant petition for Writ of Certiorari and such other and further relief as to

this Court seems just and proper.

Respectfully submitted,



RONALD LAMONT, Administrator of the
Estate of BERNIECE P. LAMONT,
Deceased, Plaintiff in Pro Per
Petitioner

STATEMENT OF RELATED CASES

Pursuant to Rules of the United States Supreme Court, Petitioner knows of no cases that are related to this appeal which are now pending before this court.

DATED: April , 1985.

APPENDIX A

B008783

Robert Lamont
11734 Wilshire Blvd.
C-810
Los Angeles, CA 90025

B008783
Lamont, Ronald
vs.
Wolfe, Robert, M.D. et al.,
JAN 30 1985
Motion granted, appeal dismissed.

APPENDIX B

2nd Civil No. B008783

IN THE
DISTRICT COURT OF APPEAL
of the
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

RONALD LAMONT, Administrator of the
Estate of BERNIECE P. LAMONT, Deceased,
Plaintiff and APPELLANT,

vs.

ROBERT WOLFE, M.D.; RICHARD STERTZ;
CHARLES R. McELROY, M.D.;
MICHAEL BRODSKY, M.D.;
JOHN McAVERY, M.D.; IRVIN
WHEELER, M.D.; EDMOND ROSALES
M.D.; UCLA HOSPITAL AND CLINICS
AND DOES 1 through 40, Inclusive,
Defendant and RESPONDENT.

APPELLANT'S OPPOSITION TO
MOTION TO DISMISS APPEAL

Appeal from the Superior Court
Los Angeles County
Case No. WEC 53299
Honorable LAURENCE J. RITTENBAND, Judge

RONALD LAMONT
11734 Wilshire Blvd., Apt. C 810
Los Angeles, CA 90025
Telephone No.: 213/473-3250

In Propria Persona

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS

I. INTRODUCTION

This is an action for damages for wrongful death, survival and negligence. Plaintiff and Appellant Ronald Lamont has sued Respondents The Regents of the University of California; Robert Wolfe, M.D.; Charles R. McElroy, M.D.; Michael Brodsky, M.D.; and Irvin Wheeler, M.D. in connection with their treatment of and the alleged wrongful death of plaintiff's deceased wife, Bernice P. Lamont. As the accompanying Certificate of the Clerk of the Superior Court demonstrates, plaintiff's appeal concerns a discovery sanction order issued by the trial court on July 6, 1984. The order precludes plaintiff from offering any evidence at trial as to the areas or subjects addressed in interrogatories 2, 3, 7, 9, 10, 11, 12, 13, 14 and 15.

Appellant submits his opposition to Motion to Dismiss has appeal because the July 6, 1984 Order is a Final Judgment and, therefore, is appeal-

able.

Plaintiff and Appellant, Ronald Lamont, Administrator of the Estate of Berniece P. Lamont, deceased, hereby petitions the Court to deny the Motion to Dismiss the appeal filed in this matter on August 3, 1984.

This Petition of Opposition to the Motion to Dismiss the appeal on the ground that the order from which the appeal has been taken is a Final Judgment and, therefore, is appealable as it eliminates Appellant's entire Complaint and claim against Defendants and Respondents The Regents of the University of California; Robert Wolfe, M.D.; Charles R. McElroy, M.D.; Michael Brodsky, M.D.; and Irvin Wheeler, M.D.

The opposition to the Motion to Dismiss is made on the ground that the Order from which the appeal has been taken is final and is appealable. Said opposition is based on this opposition paper, interrogatories propounded to Ronald Lamont, Third Set of Answers to Interrogatories propounded to Ronald Lamont and the Memorandum of Points and Authorities attached hereto.

Dated:

Respectfully submitted,
RONALD LAMONT, Administrator of the
Estate of Berniece Lamont, Deceased

II. THE JULY 6, 1984 ORDER IS A FINAL JUDGMENT NOT AN INTERLOCUTORY ORDER AND IS SUBJECT TO APPEAL.

California Code of Civil Procedure §904.1(a) provides that:

> An appeal may be taken from a Superior Court in the following cases:
>
> (a) From a judgment

An interlocutory order is one which does not finally determine the rights of the parties. Thus, "an order entered prior to such final determination is interlocutory only and no appeal lies from such order." **Draus v. Alfred M. Lewis, Inc.** (1968) 261 Cal.App.2d 485, 489.

The order of July 6, 1984 did finally determine the rights of the Plaintiff and Appellant, it is a final judgment and a dismissal of the entire Complaint and claim for damages by the Appellant.

An order, removing any cause of action alleged and leaving no issues to be determined, though designated a minute entry, is treated as a judgment of dismissal and as appealable under the law in effect at the time appeal was taken, where the order is in the form of a written order signed by the court and filed in the aciton. **Muller v. Tanner** (1969) 2 CA3d 438, 82 Cal.Rptr. 734.

III. IN THE INSTANT CASE, THE JULY 6, 1984 ORDER IS DISMISSAL AND FINAL JUDGMENT AND LEAVES NO ISSUES TO BE DETERMINED.

The Order precludes Plaintiff and Appellant from offering any evidence at trial as to the areas or subjects addressed in Interrogatories No. 9 and No. 10, p. 13, 14.

9. Do you contend that any of the Defendants, either did something which did not meet the standard of practice or failed to do something required of it by the standard of practice in its rendering of medical and hospital services to the decedent? If so, please set forth specifically and in detail and separately each such contention.

10. Please set forth all facts known to you or anyone acting on your behalf upon which you base each of the above mentioned contentions. In answering, please set forth all facts separately as to each contention you are making.

Plaintiff and Appellant's answers to Interrogatories No. 9 and No. 10, P. 23, 25.

INTERROGATORIES NO. 9 AND NO. 10

Yes, I very definitely contend that the defendants were completely responsible for all of the damage inflicted upon my wife, Berniece Lamont, and were totally responsible for her trail of horror from her destruction at U.C.L.A. by the defendants until her

death at the David Brotman Memorial Hospital.

1. Dr. McElroy lied to us when my wife entered U.C.L.A. Medical Center. He told her that she would not have students working on her, only M.D.'s.

2. On May 12, 13 and 14 of 1977, Berniece Lamont's heart was correcting itself slowly. The doctors at U.C.L.A. should have left her alone and allowed her heart to correct itself on its own and only monitor this change at the very most.

3. When the doctors at U.C.L.A., Doctors McElroy, Wolfe, Stertz, et al., wished to bring Berniece Lamont's heart to perfect rhythm medically, **there was no disclosure of possible risk.**

4. When the above doctors listed in (No. 3) wished to bring Berniece Lamont's heart to perfect rhythm medically, her husband insisted that they give Berniece Lamont an anticoagulant to prevent her from throwing blood clots, **they flatly refused stating that there was no risk involved in this procedure** whereas giving her an anticoagulant poses a much greater risk.

5. They tried to convert Berniece Lamont's heart instantly which was **too dangerous**; they should have done it slowly over several days.

6. I walked into Dr. Woofe's and Dr. Brodsky's office unexpectedly and found both reviewing and destroying some of Berniece Lamont's medical record.

7. Berniece Lamont's condition at the time of her discharge was falsified to show her in stable condition. Upon examination after she was transferred to Northridge Memorial Hospital, her heart was found to be in a very dangerously unstable condition, requiring her to be put in intensive care immediately and heperinized to prevent her from again throwing massive blood clots.

8. Berniece Lamont's blood was taken from her for U.C.L.A. Medical research programs without her consent or the consent of her husband, Ronald Lamont.

9. Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA: ROBERT WOLFE, M.D.; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D. were negligent in their examination, diagnosis, prescription of medicine and drugs, care and treatment of decedent, BERNIECE LAMONT.

Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; ROBERT WOLFE, M.D.; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D. did cause injury and damage to Plaintiff's decedent as a result of any allegation made by Plaintiff in his complaint.

Plaintiff's decedent did sustain injury and damage as a result of acts of omission on the part of Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; ROBERT WOLFE, M.D.; CHARLES

McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D., their agents or employees.

The medical records at U.C.L.A., the testimony of the Defendants, my testimony, the medical records of all of the hospitals that Berniece Lamont, Decedent, attended, listed in Interrogatory No. 7 and the testimony of the doctors and staff involved will verify my allegations that much of Berniece Lamont's brain was destroyed, her entire right side was paralyzed, all of the arteries in her legs were filled with blood clots, she could not speak with the exceptions of possibly yes or no, her heart was much more severely damages as a result of the negligence of the Defendants.

Furthermore answers to all Interrogatories which have anything to do with damage claims or the complaint have been dismissed from use as evid ence at trial. These are No's. 2, 3, 7, 9, 10, 11, 12, 13, 14 and 15 P 65.

It should be apparent to this Court that no further issues are to be resolved and this order of July 6, 1984 is a Final Judgment.

In a prior appeal in this Court it was ruled:

Lamont v. Wolfe, 142 Cal.App.3d 357; Cal.Rptr. (April 1983).

> In this case the chief witnesses for the defense are the Defendants themselves, their agents and employees. The medical

records of Berniece Lamont are in the custody of Defendants. By the time they were notified of Berniece Lamont's death, Defendants should already have taken the necessary steps to gather and preserve evidence bearing on the Lamont's claims of medical malpractice and Ronald Lamont's damages for loss of consortium. This evidence forms the core of the defense to the wrongful death action and defines Defendants' position on the amount of damages if liability is established.

CONCLUSION

Based upon the above submitted evidence it should be apparent to this Court that the Order of July 6, 1984 is a Final Judgment and is appealable.

WHEREFORE, Plaintiff prays that:

1. The motion to dismiss the appeal is denied.
2. The appeal be allowed to proceed.

December 20, 1984

Respectfully submitted,

RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased, Plaintiff in Pro Per

VERIFICATION

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, RONALD LAMONT, declare:

That I am the Plaintiff in the herein action;

That I have read the foregoing Opposition to Motion to Dismiss and know the contents thereof; that it is true to my own knowledge except as to matter therein alleged on information and belief, and that, as to those matters, I believe it to be true.

Executed at Los Angeles, California on December 20, 1984.

I declare, under penalty of perjury, that the foregoing is true and correct.

_____

RONALD LAMONT

APPENDIX C

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
CLAY ROBBINS, JR., CLERK

DIVISION: DATE: 12/07/84

Robert Lamont
11734 Wilshire Blvd.
C-810
Los Angeles, CA 90025
Re: Lamont, Ronald
vs.
Wolfe, Robert, M.D., et al.,
2 Civil B008783
Los Angeles, NO. WEC53299

Dear Counsel:

The Record on Appeal in the above-entitled case has been filed this day under the number shown above.

Appellant(s) Opening Brief is due within 30 days from this date.

Very truly yours,
CLAY ROBBINS, JR., Clerk

Deputy Clerk

cc: All Counsel

APPENDIX D

Second Appellate District
3580 Wilshire Blvd., Suite 301
Los Angeles, CA 90010
Phone: (213) 736-2391
RONALD LAMONT
11734 Wilshire Blvd., C-810
Los Angeles, CA 90025
Telephone: (213) 473-3250
In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased,

Plaintiffs,

vs.

ROBERT WOLFE, M.D.; RICHARD STERTZ; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D.; JOHN McAVERY, M.D.; IRVIN WHEELER, M.D.; EDMOND ROSALES, M.D.; UCLA HOSPITAL AND CLINICS and DOES 1 through 40, Inclusive,

Defendants.

CASE NO. WEC 53299

NOTICE OF APPEAL
(CAL Rules of Ct. Rule 1(a)1

NOTICE IS HEREBY GIVEN that RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased, Plaintiff, appeals from the Minute Order and Judgment, filed on July 6, 1984. This Judgment is a complete dismissal of Plaintiff's entire Complaint.

Heretofore Plaintiff appeals this Judgment in its entirety.

Dated: August 3, 1984

By:_____
RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased

APPENDIX E

Date JULY 6, 1984
HONORABLE L.J. RITTENBAND, Judge

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

D. Tschekaloff, Deputy Clerk
, Reporter

Deputy Sheriff
Court Attendant
(Parties and counsel checked if present)

WEC 53299

Counsel for Plaintiff
LAMONT, RONALD, etc

Counsel for Defendant
WOLFE, ROBERT, etc et al

NATURE OF PROCEEDINGS:
RULING ON SUBMITTED MATTER

In the above entitled matter heretofore taken under submission on June 29, 1984, the Court now makes the following ruling.

The plaintiff has failed further to answer interrogatories 2, 3, 7, 9, 10, 11, 12, 13, 14 and 15. The plaintiff shall be precluded from offering any evidence on trial as to any of the areas or subjects addressed in said interrogatories.

The below noted counsel are notified by U.S. Mail this date.

Ronald Lamont
11734 Wilshire Blvd., C-810
Los Angeles, CA 90025
David A. Prestholt
O'FLAHERTY, ABRAHAMS & Carl
1545 Wilshire Blvd., Suite 302
Los Angeles, Ca 90017

Dept. WE C
Minutes Entered
7-6-84
County Clerk

MINUTE ORDER

APPENDIX F

ORIGINAL FILED
JUN 25 1984
WEST DISTRICT
COUNTY CLERK

RONALD LAMONT
11734 Wilshire Blvd., C-810
Los Angeles, CA 90025
Telephone (213) 473-3250
Plaintiff. In Pro Per

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CASE NO. WEC 53299
(WRONGFUL DEATH)

RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased,

Plaintiff,

vs.

ROBERT WOLF, M.D.; RICHARD STERTZ; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D.; JOHN McAVERY, M.D.; IRWIN WHEELER, M.D.; EDMOND ROSALES, M.D.; UCLA HOSPITAL AND CLINICS; and DOES 1 through 40, inclusive.

Defendants.

OPPOSITION TO MOTION TO DISMISS FOR FAILURE TO COMPLY WITH DISCOVERY; AND FOR SANCTIONS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

DATE: June 29l, 1984
TIME: 9:00 A.M.
DEPT: C

INTRODUCTION

TO: ALL DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD: RONALD LAMONT, ADMINISTRATOR OF THE ESTATE OF BERNIECE P. LAMONT, DECEASED, PLAINTIFF, IN PRO PER: Hereby responds to Defendant's Motion to Compel Further Answers to Interrogatories Propounded to be heard on June 29, 1984, at 9:00 A.M. in Department C.

SUMMARY

This is an action for wrongful death brought by the Plaintiff as the only heir of the Decedent. This action was originally commenced by both Plaintiff, Ronald Lamont, and his wife, Decedent Plaintiff, Berniece P. Lamont while still living filed a complaint for a valid cause of action for medical malpractice on May 12, 1978.

On or about June 10, 1978, the Defendant filed

an answer to the above-referenced complaint.

On October 9, 1979, Plaintiff Berniece P. Lamont died eliminating her cause of action for medical malpractice for which she would have been entitled for damages for her pain and suffering.

On or about June 10, 1980, Defendant filed a Demand for Statement of Damages and Interrogatories Propounded to Plaintiff, Plaintiff requested a continuance to August 15, 1980 which was granted.

Plaintiff answered the above-mentioned Interrogatories Propounded on August 15, 1980 as agreed.

On September 17, 1980 Defendant filed a Motion for an Order Compelling Answers to Interrogatories to be heard on October 10, 1980. These Answers were really all directed at Berniece P. Lamont, Decedent. Ronald Lamont, Plaintiff and husband of the Decedent filed a Memo in Opposition to Compel further Answers to Interrogatories on October 8, 1980 which included a copy of U.C.L.A. medical report showing massive brain damage to Berniece P. Lamont, Decedent.

Plaintiff, Ronald Lamont, filed a Motion to Amend Complaint on November 10, 1980 to that of Wrongful Death, set to be heard on December 12, 1980, which proved to conflict with the date of another action. This date was changed to January 2, 1981.

Kathryn S. M. Mosely, Attorney of Harrington

Foxx, Dubrow and Canter, Attorneys for Defendants, called and requested a continuance as the date of January 2, 1981 interfaced with their holiday plans; the date was rescheduled to January 16, 1981 (166).

On January 9, 1981 the Defendants filed Opposition to Motion to Amend the Complaint.

Plaintiff, Ronald Lamont, filed supplemental Points and Authorities in Support of Plaintiff's Motion on January 15, 1981.

The Motion to Amend was heard by the Honorable L.J. Rittenband, Judge, and the Motion was granted on January 16, 1981.

On February 18, 1981 the first amended complaint was filed changing the complaint to that of wrongful death. Plaintiff Ronald Lamont did not have the background to draw up this document and sought and hired legal assistance in drawing up this document. This was the first and only time Plaintiff had any legal assistance.

On March 18, 1981 attorneys for Defendants filed a Motion to Strike and a Demurrer to be heard on April 10, 1981. At that time their opposition was denied and the motion granted.

On March 3, 1981, Plaintiff Ronald Lamont filed opposition paper to Demurrer and Motion to Strike based upon same arguments as used against Opposition to Motion to Amend Complaint filed on January 9, 1981.

The motion was heard on April 10, 1981 by the Honorable L.J. Rittenband, Judge. The Demurrer was sustained without leave to amend.

An appeal was filed in the Court of Appeal, Second Appellate District and their ruling was filed on April 26, 1983 reversing the order issued by Laurence J. Rittenband, Judge of the Superior Court (Exhibit "A").

Defendants sent a set of interrogatories and a set of Requests for Admissions, which were related to these Interrogatories to Plaintiff Ronald Lamont on or about June 24, 1983 (Exhibits "B" and "C").

Plaintiff sent answer to both the above Interrogatories and Request for Admissions on July 26, 1983 (Exhibits "D" and "E") to Defendants.

Defendants sent Plaintiff Ronald Lamont a letter dated August 10, 1983 (Exhibit "F").

Defendants filed a Notice of Motion to Compel Answers to Interrogatories and to Compel Further Answers to Interrogatories Propounded to Plaintiff and for sanctions on August 25, 1983.

Defendant's motion was heard on October 14, 1983 and the Court ruled: "to Compel Further Answers to Interrogatories Propounded to Plaintiff by Defendants on June 24, 1983 and for Sanctions (Exhibit "G"), Court Reporter's Transcript (Exhibit "H").

Plaintiff sent Defendants a Second Set of Answers to Interrogatories Propounded on November

14, 1982, the 12th fell on a Saturday (Exhibit "J").

On or about December 6, 1983 Defendants sent Plaintiff a Notice of Motion and Motion to Dismiss Case No. WEC 53299 to be heard on January 6, 1983 and the date on the first line, "Please take notice that on January 6, 1983" (Exhibit "K").

On or about December 23, 1983 Defendants sent Plaintiff a copy of the Declaration of David A. Presholt, Case No. WEC 53299 (Exhibit "L").

Plaintiff went to Court to examine the file of Case No. WEC 53299 and found that the Notice of Motion (Exhibit "J") had been altered by the last 9 of Case No. WEC 532999 had been marked out and the two dates had been marked out and replaced with date of February 10, 1984 (Exhibit "M").

Plaintiff did not receive notification of the change of trial dates although upon examination of the file, there was a copy of such notice in the file and it, too, was wrong. It had the wrong Case No. 532999 (Exhibit "N"). It also had been altered. Plaintiff sent Defendants an Amendment to his Second Set of Answers to Interrogatories Propounded. These were added to and became part of Exhibit "J" on February 10, 1984, primarily additional copies of medical records.

On February 10, 1984 the Motion was heard by The Honorable L. J. Rittenband, Judge. The Court ordered the Plaintiff's Action Dismissed unless

further Answers were given within 60 days (Exhibit "P").

Plaintiff sent further Answers to Defendant's Interrogatories on April 9, 1984 in compliance with the Court's Order (Exhibit "O").

On April 13, 1984 Defendants sent Plaintiff a letter requesting further Responses. They did not spell out their needs, they simply requested further Answers.

On May 27, 1984 Defendants sent Plaintiff a Notice of Motion to Dismiss to be heard on June 29, 1984 filed on June 29, 1984.

Plaintiff fildd Opposition Paper on June 25, 1984 and Defendants were served a copy thereof.

MEMORANDUM OF POINTS AND AUTHORITIES

Ronald Lamont, Plaintiff, incorporates herein by this reference the Introduction and Summary as set forth in its entirety.

This Notice of Motion must be based upon "all documents" in the file.

ARGUMENT I

The Court ordered Plaintiff on October 14, 1983 to Answer Defendant's Interrogatories Numbers Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen and Fifteen in spite of the fact that no Moving

Papers were filed on these Interrogatories and were not argued in Court. See Exhibit "H", page 4, lines 22 to 28.

On February 10, 1984 the Honorable L. J. Rittenband, Judge, ordered Plaintiff's Action Dismissed unless further Answers were filed within 60 days. See Exhibit "P". Plaintiff answered on April 13, 1983 in compliance with the Order of the Court (Exhibit "Q").

Defendants by seeking a dismissal by means of discovery with the use of distortion in their motion are attempting to deprive Plaintiff of his rights to a fair trial by due process of law guaranteed by the **Fourteenth Amendment to the Federal Constitution**, which provides that no state shall "deprive **any person** of life, liberty, or property, without due process of law". The California Constitution also contains a due process clause. (Art. I, § 13.) And the Fifth Amendment stated a similar tion on the **federal government.**

Defendants are distorting the facts in this Motion with their sole purpose to seek a dismissal.

C.C.P. §2030 (1.5).

DEYO v. KILBOURNE (1978) 149 Cal.Rptr. 449, 84 C.A.3d 771.

> "Neither party may employ discovery rules with long range objective of trapping other party into imposing of sanctions,

especially imposition of the most severe sanction".

Defendant's Motion to Discuss, page 17, lines 1-3.

"As to Brotman Memorial Hospital, Plaintiff failed to provide the reason for the hospitalization or a description of what was done during the hospitalization".

This statement is a deliberate falsehood meant to deceive the Court verification of this from Defendant's own Motion, page 14, lines 7-13.

"...then to David Brotman Memorial Hospital, Culver City, California for another double aorta femeral (sic) by-pass, then to Long Beach Memorial Hospital and Medical Center, Long Beach, California for a series of amputations, first the foot, then at the ankle, then below the knee and then another femeral by-pass, then back to Brotman Memorial Hospital for still another femeral by-pass..."

Further false statement:

"As to St. Vincent Medical Center, Los Angeles, Plaintiff failed to provide a description of what was done during the hospitalization".

This statement is again proven false from Defendants' Motion, page 14, lines 5, 6 and 7.

"...then to St. Vincent's Medical Center,

Los Angeles, California for an aorta femeral double by-pass,"

Another false statement, page 17, lines 7-10.

"As to Memorial Hospital Medical Center of Long Beach, Plaintiff failed to provide a description of what was done during the hospitalization".

The above statement is proven false from Defendant's own Motion, page 14, lines 9-14.

"...then to Long Beach Memorial Hospital and Medical Center, Long Beach, California for a series of amputations, first the foot, then at the ankle, then below the knee and then another femeral by-pass, then back to Brotman Memorial Hospital for still another femeral by-pass, then back to Long Beach Memorial for an above-the-knee amputation,..."

Defendant further stated:

"The response "amputations and hyperbaric treatment" is hopelessly vague and uncertain. In addition, Plaintiff failed to provide a description of what was done during the hospitalization".

Defendants made another false statement, from Defendant's Motion, Page 17, lines 10 and 11:

" As long as Los Angeles New Hospital, Plaintiff failed to provide the reason for the hospitalization".

The above statement is proven false from Defendant's own Motion, page 14, lines 14 and 15:

> ". . .then to the L.A. New Hospital, Los Angeles, California for a higher above the knee amputation. . ."

On page 17, lines 15 and 16 Defendant attempts to solidify his deception regarding the above false statement.

> "Finally, the form in which the information is provided makes it virtually impossible to decipher".

ARGUMENT II

PLAINTIFF HAS ANSWERED DEFENDANTS' INTERROGATORIES WITH THE INTENTION OF GIVING DEFENDANTS SUFFICIENT DATA TO ENABLE THEM TO TRULY EVALUATE THE CHARGES MADE AND TO EXAMINE EVIDENCE TO SUPPORT THESE CHARGES AGAINST THEM.

Lamont v. Wolfe, 142 Cal.App.3d 357; Cal. Rptr. (April 1983).

> In this case the chief witnesses for the defense are the Defendants themselves, their agents and employees. The medical records of Berniece Lamont are in the custody of Defendants. By the time they were

notified of Berniece Lamont's death, Defendants should already have taken the necessary steps to gather and preserve evidence bearing on the Lamont's claims of medical malpractice and Ronald Lamont's damages for loss of consortium. This evidence forms the core of the defense to the wrongful death actio and defines Defendants' position on the amount of damages if liability is established.

THE ANSWERS TO THE OTHER INTERROGATORIES HAVE BEEN COMPLETED TO THE BEST OF PLAINTIFF'S KNOWLEDGE.

Columbia Broadcasting System, Inc. v. Superior Court, (1968) 263 Cal.App.2d 12, 19, 69 Cal.Rptr. 348.

If Interrogatories stray too far and seek information which cannot reasonably serve acknowledged purpose of pretrial discovery, Motion to Compel Further Answers should be denied.

CONCLUSION

PLAINTIFF HAS COMPLIED WITH THE COURT'S ORDER. DEFENDANTS ARE ATTEMPTING TO OBTAIN A DISMISSAL BY THE USE OF FALSE STATEMENTS AND DECEPTION.

The Defendants' Interrogatories have been answered and all points brought by Defendants have been covered with verification of these charges from Defendants' own records.

WHEREFORE, Plaintiff prays that:

1. No order be given.
2. Nothing be taken from Plaintiff.

June 25, 1984

Respectfully submitted,

_____

RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased, Plaintiff in Pro Per

VERIFICATION

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, RONALD LAMONT, declare:

That I am the Plaintiff in the herein action;

That I have read the foregoing Opposition to Motion to Dismiss and know the contents thereof; that it is true to my own knowledge except as to matters therein alleged on information and belief, and that, as to those matters, I believe it to be true.

Executed at Los Angeles, California on June 25, 1984.

I declare, under penalty of perjury, that the foregoing is true and correct.

_____

RONALD LAMONT

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)
COUNTY OF LOS ANGELES)

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address/residence address is:
648 Hill Street, Santa Monica, California 90405
On June 25, 1984, I served the within **OPPOSITION TO MOTION TO DISMISS** on the Interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:
David A. Prestholt, Attorney
O'Flaherty, Abrahams & Carl
Attorneys at Law
1545 Wilshire Blvd., Suite 302
Los Angeles, CA 90017

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on June 25, 1984 at Los Angeles, California.

_____

Linda de Martinez

*proof of service by mail form being signed under penalty of perjury.

APPENDIX G

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C
HON. LAURENCE J. RITTENBAND, JUDGE
RONALD LAMONT, ADMINISTRATOR OF THE ESTATE OF BERNIECE P. LAMONT, DECEASED,

Plaintiffs,

vs.

ROBERT WOLF, M.D., RICHARD STERTZ, CHARLES R. MC ELROY, M.D., MICHAEL MC AVERY, M.D., IRWIN WHEELER, M.D., EDMOND ROSALES, M.D., UCLA HOSPITAL AND CLINICS, AND DOES 1 through 40, INCLUSIVE,

Defendants.

Case No. WE C 53299

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, OCTOBER 14, 1983

APPEARANCES:

FOR THE PLAINTIFFS:

RONALD LAMONT
IN PROPRIA PERSONA
11734 WILSHIRE BOULEVARD, C-810
LOS ANGELES, CALIFORNIA 90025

FOR THE DEFENDANTS:

O'FLAHERTY, ABRAHAMS & CARL
BY: DAVID PRESTHOLT
1545 WILSHIRE BOULEVARD, SUITE 302
LOS ANGELES, CALIFORNIA 90017

ORIGINAL

ROSEMARIE GOODBODY, CSR No. 932
OFFICIAL REPORTER

SANTA MONICA, CALIFORNIA; FRIDAY,
OCTOBER 14, 1983; 10:00 A.M.

DEPARTMENT WEST A
HON. LAURENCE J. RITTENBAND, JUDGE

--000--

THE COURT: Please give your appearances for the reporter.

MR. LAMONT: Yes. I am Ronald Lamont. I am the Plaintiff and Respondent.

MR. PRESTHOLT: David Prestholt for the Defendants.

THE COURT: This is a motion to compel answers to Interrogatories. Hasn't that been reviewed by the Court of Appeals and the responses to the Interrogatories were ordered to be given?

MR. LAMONT: Well, your Honor --

THE COURT: Let me see the file.

MR. LAMONT: The Appellate Court had ruled on a prior action they had, attempting to shorten time. In other words, the Statute of Limitations required that the case be changed from --

THE COURT: Yes.

MR. LAMONT: -- from medical malpractice to wrongful death and there was a slight extension of time. The Appellate Court ruled that the extension of time was proper.

THE COURT: Yes. It was within the period because it refers back.

MR. LAMONT: Yes.

THE COURT: Because of the relation back theory; isn't that right?

MR. LAMONT: Yes, your Honor.

But here the opposition, I would say, the Defendants have submitted their Interrogatories to me. Now, the Appeals Court in the original ruling ruled that the Defendants had all of the information. They had the medical records. The doctors performed all of the procedures and were defendants so the defendants had in their own possession all of the information necessary for their own defense.

Now the defendants have asked for Interrogatories specifying the individual doctors' names and telephone numbers and addresses of all of the doctors that subsequently saw my wife and there were over a hundred of them.

I am perfectly willing to give to the Defendants releases so that they in turn can contact all of the hospitals and get the names and the entire medical records of all subsequent treatment of my wife up until the time of her death, rather than go through a few questions and then have them say, "Well, the answers are not satisfactory. They are incomplete."

I feel regardless of what answer I gave them, they could very well say that they are unsatisfactory.

This way, if I give them the releases, they are able to obtain all of the information and there will be no reason to answer them.

THE COURT: They want you to answer the Interrogatories.

MR. LAMONT: I understand that.

I answered the Interrogatories. They are not satisfied with the answers I submitted to them.

THE COURT: You didn't answer the Interrogatories and here is what --

MR. LAMONT: Your Honor, I answered the Interrogatories. I answered their Admissions and I answered their Interrogatories.

And in any case, I have it as Exhibit D.

THE COURT: All right. Referring to Interrogatory number two:

"Please set forth each and every medical, physical, mental or emotional complaint which you presently have, and which you claim was caused by the allegations in your complaint herein.

"Response to Interrogatories number Two, Five and Six:

"I object to the introduction of these Interrogatories at this time.". . .

MR. LAMONT: Well, regarding my own health, I don't see any reason for them to search into my health.

It is my wife that they killed.

THE COURT: Well, how did they kill her?

MR. LAMONT: Well, by their treatment.

THE COURT: So I see here. By medical malpractice, you mean?

MR. LAMONT: Malpractice, yes, your Honor.

And I have given them an entire listing of all of the hospitals that she had been to and that was in the answer to Interrogatory number Seven.

THE COURT: Let me see now. In the Interrogatory, to whom is that directed to by you? Do you mean to him or do you mean his wife?

MR. PRESTHOLT: To him, but we are asking which he claims were caused by the allegations in his complaint. If he isn't making any claims for himself --

THE COURT: Are you making any claims at all for anything that happened to you?

MR. LAMONT: I am making claims for all of the damages which, in effect, happened to me, the pain and suffering in a sense that I went through.

THE COURT: They want to know every medical, physical, mental or emotional complaint which you presently have and which you claim was caused by the death.

MR. LAMONT: I will be happy to answer the mental and emotional complaints. I was with my wife for 2 years, 24 hours a day, I was continually aware that she could be dead any minute and I was, let's say, many times I was informed that she would die within a few hours. I went through 2 years of that.

THE COURT: All right, I will order that Interrogatories number Two, Three, Four, Five, Six and Seven be answered, those are the ones that you wanted. And then you say Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen and Fourteen and Fifteen; which is it you want?

Your motion only had to do with Two, Three, Four, Five, Six and Seven.

MR. LAMONT: Your Honor --

THE COURT: Just a minute.

MR. LAMONT: May I interject?

MR. PRESTHOLT: We have further answers to Two, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven,

Twelve, Thirteen, Fourteen and Fifteen as well as the first answer. He never answered number Three at all.

MR. LAMONT: Well, I put that in my objection. I gave the answer to number Three.

THE COURT: Answer those Interrogatories, Mr. Lamont, as best you can.

MR. LAMONT: Your Honor, I have answered number Seven very clearly.

THE COURT: Number Seven is:

"Was your wife hospitalized at any time after her contact with UCLA in May, 1977?"

MR. LAMONT: I gave them --

THE COURT:

"If so, please set forth the following:

"The name, address and telephone number of each hospital," and so forth.

And your answer was:

"My wife, Berniece Lamont, was transferred from the UCLA Medical Center by ambulance to the Northridge Medical Center" . . .

MR. LAMONT: Then to St. Vincent's Hospital.

THE COURT: You haven't answered the rest of it.

MR. LAMONT: There are the addresses there.

THE COURT: That is the only first part of it.

"The inclusive dates of each hospitalization; the reason for each hospitalization; a description of what was done during each hospitalization."

You haven't answered that.

MR. LAMONT: Your Honor, in order to expedite this and make it easier for them and give them more clear information, I am perfectly willing to give them releases so they in turn can get the entire hospital records.

THE COURT: No, no. That is not an answer to the Interrogatory, unless they want to accept it, and that is perfectly all right with me.

MR. LAMONT: I think it should be accepted by them.

MR. PRESTHOLT: No, your Honor.

THE COURT: They want the answers to the Interrogatories.

MR. LAMONT: They are asking me to go through a very big bundle and a tremendous amount of work.

THE COURT: You are the one that is suing.

MR. LAMONT: I understand that.

THE COURT: You have to produce it at the trial anyway, wouldn't you?

MR. LAMONT: Well, producing all of the medical records, all of it will be in there.

THE COURT: Just putting in the medical records, they may not be admissible.

You would have to testify exactly to the facts that they seek from you.

I will order them answered. Do the best you can, Mr. Lamont, will you?

MR. PRESTHOLT: Your Honor, about the sanctions, I realize it is difficult.

THE COURT: He is not a lawyer. He is in pro per and he isn't expected to observe all of the formalities and niceties as a lawyer would when he answers or makes these motions.

MR. PRESTHOLT: Except we have no contact. We gave -- we filed and we served the Interrogatories, we sent a letter and we had no response for over a month or two months. This is horribly expensive.

If he would just call, if we could get together and tak about it. This is ridiculous. Every time we want any information, we have to file a motion and come down to court. This wastes an entire afternoon and it costs our clients a tremendous amount of money.

MR. LAMONT: Your Honor, I talked with Peter Abrahams, I suggested we sit down together and have a meeting and talk about all of these things.

THE COURT: I tell you what I am going to do. In the event that he succeeds in this case and gets a judgment, I am going to award you attorney's fees of $350 which can be taxed by you as costs and deducted from that judgment if he gets a judgment against you.

MR. PRESTHOLT: Thank you, your Honor.

MR. LAMONT: Yes, your Honor.

THE COURT: Notice is waived?

MR. LAMONT: How much time will I be allowed to

answer these?

THE COURT: How long do you want?

MR. LAMONT: Pardon?

THE COURT: How long do you want?

MR. LAMONT: I would like 45 days because of the extensive amount of work.

THE COURT: I will give you 30 days. That ought to be enough. Thank you. 30 days to answer.

THE CLERK: Is Notice waived?

THE COURT: Is Notice waived?

MR. PRESTHOLT: Yes, your Honor.

THE COURT: You don't want him to do any work by having him give Notice?

MR. LAMONT: I would like for him to give Notice.

THE COURT: Then the fee will be $400.

MR. LAMONT: I will waive the Notice.

(At 10:10 a.m., an adjournment was taken in the above-entitled matter.)

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SUPERIOR COURT OF THE
STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C
HON. LAURENCE J. RITTENBAND, JUDGE
Case No. We C 53299

RONALD LAMONT, ADMINISTRATOR OF THE ESTATE OF BERNIECE P. LAMONT, DECEASED,

Plaintiffs,

vs.

ROBERT WOLF, M.D., RICHARD STERTZ,
CHARLES R. MC ELROY, M.D.,
MICHAEL MC AVERY, M.D.,
IRWIN WHEELER, M.D.,
EDMOND ROSALES, M.D.,
UCLA HOSPITAL AND CLINICS AND
DOES 1 through 40, INCLUSIVE,

Defendants.

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, ROSEMARIE GOODBODY, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages 1 through 8, comprise a full, true, and correct transcript of the proceedings held in the above-entitled matter on Friday, October 14, 1983.

Dated this 21st Day of October, 1983.

_____

ROSEMARIE GOODBODY, CSR NO. 932
Official Reporter

APPENDIX H

RONALD LAMONT
11734 Wilshire Blvd., C-810
Los Angeles, CA 90025
(213) 473-3250

In Propria Persona

**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

No. WEC 53299

THIRD SET OF ANSWERS TO INTERROGATORIES PROPOUNDED TO RONALD LAMONT (C.C.P. §2016, 2019, 2030)

RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased, and RONALD LAMONT,

Plaintiffs,

vs.

ROBERT WOLF, M.D.; RICHARD STERTZ;
CHARLES R. MC ELROY, M.D.;
MICHAEL BRODSKY, M.D.;
JOHN MC AVERY, M.D.;
IRWIN WHEELER, M.D.;

EDMOND ROSALES, M.D.;
UCLA HOSPITAL AND CLINICS;
and Does 1 through 40,
INCLUSIVE,

Defendants.

TO: ALL DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD:

RONALD LAMONT, ADMINISTRATOR OF THE ESTATE OF BERNIECE P. LAMONT, DECEASED, PLAINTIFF, IN PRO PER:

Hereby responds to your request for answers to Interrogatories One through Fifteen inclusive in compliance with the Court's order of February 10, 1984.

INTERROGATORY NO. 1

11734 Wilshire Blvd., C-810, Los Angeles, California.

INTERROGATORY NO. 2

Every time Berniece Lamont, decedent, my wife, was in the hospital, I made arrangements whenever possible, except when she was in intensive care, to stay by her bedside approximately twenty-four hours a day. This was especially important when she was going through the series of amputations at Long Beach Memorial Hospital and she had excruciating pain; often during those pain periods in the meddle of the night it would be necessary **to find**

the nurse and ask her to come and give Berniece pain medication. I continually relive those horrific experiences both during the day and much of the night, as Berniece and I were very close and all of these agonizing surgeries were destroying me as they did ner. We lived for each other. Consequently, since she passed away, it's impossible for me to get her out of my mind and I really don't want to. I have lost my companion, homemaker, and total loss of consortium. Furthermore, she shared her income with me. Consequently, because of these physical, mental, physchological and emotional problems caused by being present while she was undergoing these operations, suffering the horrendous pain and physical destruction and vivid memory I have of this period of my life, with its shock to my system, I find it difficult to work full time very often; so I only work on occasions for short periods. I am an aerospace engineer and my rate of pay when I work is twenty dollars an hour.

INTERROGATORY NO. 3

There were no medical expenses incurred by me because I could not afford to go to a doctor.

I have lost my entire income from May 12, 1977 until the time of Berniece Lamont's death on October 9, 1979, and being emotionally destroyed so that I couldn't go to work until 1980, I lost two and two-third years of pay plus at least 1980 of my regular pay since. $130,000 in pay, plus loss of

companionship, loss of consortium, loss of my wife's share of her income, plus emotional, physical, mental, psychological damage.

My wife, Berniece Lamont, was transferred from the U.C.L.A. Medical Center, Los Angeles, California, by ambulance to the Northridge Medical Center, Northridge, California then to St. Vincent's Medical Center, Los Angeles, California for an aeorta femeral double by-pass, then to David Brotman Memorial Hospital, Culver City, California, for another double aorta femeral by-pass, then to Long Beach Memorial Hospital and Medical Center, Long Beach, California for a series of amputations, first the foot, then at the ankle, then below the knee and then another femeral by-pass, then back to Brotman Memorial Hospital for still another femeral by-pass, then back to Brotman Memorial Hospital for still another femeral by-pass, then back to Long Beach Memorial for an above-the-knee amputation, then to the L.A. New Hospital, Los Angeles, California, for a higher above the knee amputation, then back to the David Brotman Memorial Hospital, where she died on October 9, 1979.

INTERROGATORY NO. 4

I, Ronald Lamont, husband of Berniece Lamont was totally responsible for my wife's medical expense, but we did have medical insurance.

A. Reliance Insurance Companies
4 Penn Center Plaza
Philadelphia, Pennsylvania 19103

Reliance Insurance payments terminated on December 31, 1978. There was no coverage beyond that date.

b., c., & d. I have enclosed a copy of the UCLA bill and I have enclosed a copy of Reliance Insurance Company's record of payment. If this method is satisfactory, let me know and I will send the remainder - if you prefer ledger sheets, let me know. Exhibit "C".

INTERROGATORY NO. 5

No, I have not been seen, examined or treated by any doctor since my wife's hospitalization at UCLA in May, 1977.

a through d, not applicable.

INTERROGATORY NO. 6

No, I have not been hospitalized since my wife's contact with UCLA in May, 1977.

a through d, not applicable.

INTERROGATORY NO. 7 & NO. 8

Northridge Hospital Foundation
18300 Roscoe Boulevard
Northridge, CA 91328
(213) 885-8500

Dates 6/28/77 through 9/27/77 for Rehabilitation Therapy

Cedars-Sinai Medical Center
6700 Beverly Drive
Los Angeles, CA 90048

Dates 10/22/77 through 10/26/77 for Tests

St. Vincent's Medical Center, L.A.
2131 W. Third St.
Los Angeles, Ca
(213) 484-7197
Dates 10/31/77 through 11/16/77
Double Aorta By-pass Dr. Pablo Zubiate
Dr. David Brotman Memorial Hospital
3828 Delmas Terrace
Culver City, CA 90230
(213) 836-7000
Dates 11/12/77 through 4/27/78
9/7/78 through 9/11/78
10/10/78 through 10/28/78
9/17/79 through 10/9/79
She died 10/9/79
Dr. Ralph Hutchings
Dr. Tugo Sano
Memorial Hospital Medical Center of Long Beach
2801 Atlantic Avenue
Long Beach, CA 90801
Dates 8/10/78 through 9/7/78
9/11/78 through 10/20/78
10/23/78 through 12/01/78
Amputations and hyperbaric treatment
Dr. Victor Maron
L.A. New Hospital
1177 South Beverly Drive
Los Angeles, CA 90015

Dates 12/01/78 through 4/24/79
Amputation and Rehabilitation
Dr. Tugo Sano

INTERROGATORIES NO. 9 AND NO. 10

Yes, I very definitely contend that the defendants were completely responsible for all of the damage inflicted upon my wife, Berniece Lamont, and were totally responsible for her trail of horror from her destruction at U.C.L.A. by the defendants until her death at the David Brotman Memorial Hospital.

1. Dr. McElroy lied to us when my wife entered U.C.L.A. Medical Center. He told her that she would not have students working on her, only M.D.'s.

2. On May 12, 13 and 14 of 1977, Berniece Lamont's heart was correcting itself slowly. The doctors at U.C.L.A. should have left her alone and allowed her heart to correct itself on its own and only monitor this change at the very most.

3. When the doctors at U.C.L.A., Doctors McElroy, Wolfe, Stertz, et al, wished to bring Berniece Lamont's heart to perfect rhythm medically, **there was no disclosure of possible risk.**

4. When the above doctors listed in (No. 3) wished to bring Berniece Lamont's heart to perfect rhythm medically, her husband insisted that they give Berniece Lamont an anti-coagulant to prevent her from throwing blood clots, **they flatly refused stating that there was no risk involved in this procedure** whereas giving her an anti-coagulant poses a much

greater risk.

5. They tried to convert Berniece Lamont's heart instantly which was **too dangerous**; they should have done it slowly over several days.

6. I walked into Dr. Wolfe's and Dr. Brodsky's office unexpectedly and found both reviewing and destroying some of Berniece Lamont's medical record.

7. Berniece Lamont's condition at the time of her discharge was falsified to show her in stable condition. Upon examination after she was transferred to Northridge Memorial Hospital, her heart was found to be in a very dangerously unstable condition, requiring her to be put in intensive care immediately and heperinized to prevent her from again throwing massive blood clots.

8. Berniece Lamont's blood was taken from her for U.C.L.A. Medical research programs without her consent or the consent of her husband, Ronald Lamont.

9. Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA: ROBERT WOLFE, M.D.; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D. were negligent in their examination, diagnosis, prescription of medicine and drugs, care and treatment of decedent, BERNIECE LAMONT.

Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA: ROBERT WOLFE, M.D.;

CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D. did cause injury and damage to Plaintiff's decedent as a result of any allegation made by Plaintiff in his complaint.

Plaintiff's decedent did sustain injury and damage as a result of acts of omission on the part of Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; ROBERT WOLFE, M.D.; CHARLES McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D., their agents or employees.

The medical records at U.C.L.A., the testimony of the Defendants, my testimony, the medical records of all of the hospitals that Berniece Lamont, Decedent, attended, listed in Interrogatory No. 7 and the testimony of the doctors and staff involved will verify my allegations that much of Berniece Lamont's brain was destroyed (See Exhibit A), her entire right side was paralyzed, all of the arteries in her legs were filled with blood clots, she could not speak with the exceptions of possibly yes or no, her heart was much more severely damages as a result of the negligence of the Defendants.

INTERROGATORIES NOS. 11, 13, 14 and 15

Defendants are totally responsible for the brain damage, the paralysis of the entire right side of Berniece Lamont's body, of filling her femeral arteries with clots and all of the resulting damage

brought about by their negligence. In this specific case the Appellate Court ruled:

> **Lamont v. Wolfe** 142 Cal.App.3d 357; Cal. Rptr. (Apr. 1983), in this case the chief witnesses for the defense are the defendants themselves, their agents and employees. The medical records of Berniece Lamont are in the custody of the defendants. By the time they were notified of Berniece Lamont's death, defendants should already have taken the necessary steps to gather and preserve evidence bearing on the Lamonts' claims of medical malpractice and Ronald Lamont's damages for loss of consortium. This evidence forms the core of the defense to the wrongful death action and defines defendants' position on the amount of damages if liability is established.

A&C. 1. See Exhibit "A" U.C.L.A. Medical records showing brain damage.

2. Electro-cardiograms (a) from U.C.L.A. Medical.

3. Electro-cardiograms from Northridge Medical were taken of Berniece Lamont immediately after her transfer from U.C.L.A. Medical Center.

4. All of U.C.L.A. medical records.

5. See Exhibit "B" Plaintiff's in Pro Per certificate of merit.

INTERROGATORY NO. 12

Every time Berniece Lamont, decedent, my wife, was in the hospital, I made arrangements whenever possible, except when she was in intensive care, to stay by her bedside approximately twenty-four hours a day. This was especially important when she was going through the series of amputations at Long Beach Memorial Hospital and she had excruciating pain; often during those pain periods in the middle of the night it would be necessary **to find** the nurse and ask her to come and give Berniece pain medication. I continually relieve these horrific experiences both during the day and much of the night as Berniece and I were very close and all of these agonizing surgeries were destroying me as they did her. We lived for each other. Consequently, since she passed away, it's impossible for me to get her out of my mind and I really don't want to. I have lost my companion, homemaker, and total loss of consortium. Furthermore, she shared her income with me. Consequently, because of these physical, mental,psychological and emotional problems caused by being present while she was undergoing these operations, suffering the horrendous pain and physical destruction and vidid memory I have of this period of my life, with its shock to my system, I find it difficult to work full time very often; so I only work on occasions for short periods.

DATED: April 9, 1984

RONALD LAMONT, Administrator of the
Estate of BERNIECE P. LAMONT, Deceased,
Plaintiff in Pro Per

VERIFICATION

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I, RONALD LAMONT, declare:

That I am the Plaintiff in the herein action;

That I have read the foregoing Third Set of Answers to Interrogatories Propounded and know the contents thereof; and that it is true of my own knowledge except as to matters therein alleged on information and belief, and that, as to those matters, I believe it to be true.

Executed at Los Angeles, California, on April 9, 1984.

I declare, under penalty of perjury, that the foregoing is true and correct.

RONALD LAMONT

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address/residence address is:

310 Washington St., Suite 116P, Marina del Rey, CA 90292

On **April 9, 1984**, I served the within **THIRD SET OF ANSWERS TO INTERROGATORIES PROPOUNDED** on the Parties of Interest in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

David A. Prestholt, Attorney
O'Flaherty, Abrahams & Carl
Lawyers
1545 Wilshrie Boulevard, Suite 302
Los Angeles, CA 90017

I certify (or declare), under penalty of perjury*, that the foregoing is true and correct.

Executed on April 9, 1984 at Los Angeles, California.

_____

Irene March-Davison

*proof of service by mail form being signed under penalty of perjury.

Appendix J

HARRINGTON, FOXX, DUBROW & CANTER
A partnership of Professional Law Corporations
One Wilshire Building - Suite 703
Wilshire At Grand
Los Angeles, California 90017
(213) 628-2184

Attorneys for Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; ROBERT WOLFE, M.D.; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

No. WEC 53299

INTERROGATORIES PROPOUNDED TO RONALD LAMONT, ADMINISTRATOR OF THE ESTATE OF BERNIECE P. LAMONT, DECEASED

RONALD LAMONT, Administrator of the Estate of BERNIECE P. LAMONT, Deceased,

Plaintiff,

vs.

ROBERT WOLFE, M.D., etc., et al.,

Defendants.

TO: RONALD LAMONT, ADMINISTRATOR OF THE ESTATE OF BERNIECE P. LAMONT, DECEASED, PLAINTIFF, IN PRO PER:

Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; ROBERT WOLFE, M.D.; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D., request that Plaintiff answer the following Interrogatories separately and fully in writing and under oath pursuant to §2030 of the **Code of Civil Procedure**, and that the Answers be signed by the person making them and be served on these Defendants within thirty (30) days after the services of these Interrogatories.

1. Please set rorth your current residence address.

2. Please set forth each and every medical, physical, mental or emotional complaint which you presently have, and which you claim was caused by the allegations in your complaint herein.

3. Please set forth in detail and itemize all medical specials incurred by you and your deceased spouse to date, for any treatment which you claim was necessitated by the allegations in your complaint herein.

4. Has any person or entity paid any portion of any medical special insurred by you or your deceased wife? If so, please set forth the following:

(a) The name and address of the person or entity making each such payment;

(b) The date each payment was made;

(c) The total amount of each such payment;

(d) To whom each payment was made.

5. Have you been seen, examined, cared for or treated by any doctor since your wife's hospitalization at U.C.L.A. in May, 1977? If so, please set forth the following:

(a) The name, address and telephone number of each doctor;

(b) The inclusive dates of being seen by each doctor;

(c) The reason for seeing such doctor;

(d) A description of what was done to you or for you by each doctor.

6. Have you been hospitalized for any reason since your wife's contact with U.C.L.A. in may, 1977? If so, please set forth the following:

(a) The name, address and telephone number of each hospital;

(b) The inclusive dates of each hospitalization;

(c) The reason for each hospitalization;

(d) A description of what was done during each hospitalization.

7. Was your wife hospitalized at any time after her contact with U.C.L.A. in May, 1977? If so, please set forth the following:

(a) The name, address and telephone number

of each hospital;

(b) The inclusive dates of each hospitalization;

(c) The reason for each hospitalization;

(d) A description of what was done during each hospitalization.

9. Was your wife seen by any physicians at any time after her contact with U.C.L.A. in May, 1977? If so, please set forth the following:

(a) The name, address and telephone number of each hospital;

(b) The inclusive dates of each hospitalization;

(c) The reason for each hospitalization;

(d) A description of what was done during each hospitalization.

9. Do you contend that any of the Defendants, either did something which did not meet the standard of practice or failed to do something required of it by the standard of practice in its rendering of medical and hospital services to the decedent? If so, please set forth specifically and in detail and separately each such contention.

10. Please set forth all facts known to you or anyone acting on your behalf upon which you base each of the above mentioned contentions. In answering, please set forth all facts separately as to each contention you are making.

11. Has any doctor rendered an opinion to you or to anyone acting on your behalf that any of the Defendants herein failed in any respect to adhere

to or comply with the standard of care in the rendering of medical and/or hospital services to the decedent? If so, please set forth the following with respect to each doctor:

(a) The name, address and telephone number of each doctor;

(b) The date each such opinion was rendered;

(c) A summary of such doctor's opinion;

(d) Whether such doctor prepared a letter or report memorializing such opinion, and if so, the name and address of the custodian of that letter or report.

12. Are you presently employed? If you are employed, please state the following:

(a) the name, address and telephone number of the employer;

(b) The inclusive dates of employment;

(c) The wage or salary earned;

(d) A description of the job duties or responsibilities.

13. If your response to Request for Admission No. 1 of the Request for Admissions served concurrently with these Interrogatories is other than an unqualified admission, please set forth the following with respect to such response:

(a) Each and every fact or item or evidence upon which you rely in support of that response;

(b) The name, address and telephone number of each person or witness upon whom you rely in

support of such response;

(c) The identity, sufficient to support a subpena duces tecum, of each document or item of physical evidence upon which you rely in support of such response.

14. If your response to Request for Admission No. 2 of the Request for Admissions served concurrently with these Interrogatories is other than an unqualified admission, please set forth the following with respect to such response:

(a) Each and every fact or item of evidence upon which you rely in support of that response;

(b) The name, address and telephone number of each person or witness upon whom you rely in support of such response;

(c) The identity, sufficient to support a subpena duces tecum, of each document or item of physical evidence upon which you rely in support of such response.

15. If your response to Request for Admission No. 3 of the Request for Admission served concurrently with these Interrogatories is other than an unqualified admission, please set forth the following with respect to such response;

(a) Each and every fact or item of evidence upon which you rely in support of that response;

(b) The name, address and telephone number of each person or witness upon whom you rely in support of such response;

(c) The identity, sufficient to support a subpena duces tecum, of each document or item of physical evidence upon which you rely in support of such response.

HARRINGTON, FOXX, DUBROW & CANTER

By:_____

LISA M. CARL

Attorneys for Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; ROBERT WOLFE, M.D.; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D. and IRVIN WHEELER, M.D.

VERIFICATION BY PARTY (446.2015.5 C.C.P.)
STATE OF CALIFORNIA, COUNTY OF
I am the

in the above entitled action; I have read the foregoing

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe fit to be true.

I declare uner penalty of perjury that the foregoing is true and correct.
Executed on
at , California.

_____

APPENDIX "K"

TITLE 28 U.S.C. §1253.

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 928.

TITLE 28 U.S.C. §1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case in which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require record to be sent up for decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.

TITLE 28 U.S.C. §1331.

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum of value of $10,000, exclusive of interest and costs, and arise under the Constitution, laws or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff, and in addition, may impose costs on the plaintiff. June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub. L. 85-554, §1, 72 Stat. 415.

Los Angeles Superior Court
Case No. WEC 53299
2nd Civil No. B 008783

IN THE COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

RONALD LAMONT, etc.,

Appellant,

vs.

ROBERT WOLFE, M.D., et al.,

Respondent.

APPEAL FROM
SUPERIOR COURT OF LOS ANGELES COUNTY
HON. L. J. RITTENBAND, JUDGE

RESPONDENTS' MOTION TO DISMISS APPEAL

O'FLAHERTY, ABRAHAMS & CARL
PETER ABRAHAMS
1545 Wilshire Boulevard, Suite 302
Los Angeles, California 90017
(213) 484-4977

Attorneys for Defendants and
Respondents THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA;
ROBERT WOLFE, M.D.; CHARLES R.
McELROY, M.D.; MICHAEL BRODSKY, M.D.
and IRVIN WHEELER, M.D.

**MEMORANDUM OF
POINTS AND AUTHORITIES
IN SUPPORT OF
RESPONDENTS' MOTION TO DISMISS**

I. INTRODUCTION

This is an action for damages for wrongful death, survival and negligence. Plaintiff and appellant Ronald Lamont has sued respondents The Regents of the University of California; Robert Wolfe, M.D.; Charles R. McElroy, M.D.; Michael Brodsky, M.D.; and Irvin Wheeler, M.D. in connection with their treatment of and the alleged wrongful death of plaintiff's deceased wife, Berniece P. Lamont. As the accompanying Certificate of the Clerk of the Superior Court demonstrates, plaintiff's appeal concerns a discovery sanction order issued by the trial court on July 6, 1984. The order precludes plaintiff from offering any evidence at trial as to the areas or subjects addressed in interrogatories that he has refused to answer.

Respondents make this motion to dismiss this appeal because the July 6, 1984 order is not a final judgment and is therefore non-appealable. The motion is brought so that the appealability issue can be resolved at this time, thereby avoiding the unnecessary expense of briefing the merits of a premature appeal.

Defendants and respondents The Regents of the University of California; Robert Wolfe, M.D.; Charles R. McElroy, M.D.; Michael Brodsky, M.D.; and Irvin Wheeler, M.D. hereby move the court for an order dismissing the appeal filed in this matter on August 3, 1984.

The motion is made on the ground that the order from which the appeal has been taken is not final and not appealable and that the attempted appeal is premature. Said motion is based on this Notice, the Certificate from the Clerk of the Superior Court and the Memorandum of Points and Authorities attached hereto.

DATED: December 7, 1984

O'FLAHERTY, ABRAHAMS & CARL

By:_____

PETER ABRAHAMS

Attorneys for Defendants and Respondents

THE REGENTS OF THE

UNIVERSITY OF CALIFORNIA;

ROBERT WOLFE, M.D.;
CHARLES R. McELROY, M.D.;
MICHAEL BRODSKY, M.D.;
and IRVIN WHEELER, M.D.

II. AN INTERLOCUTORY ORDER IS NOT SUBJECT TO APPEAL.

California Code of Civil Procedure §904.1(a) provides that:

> An appeal may be taken from a Superior Court in the following cases:
>
> (a) From a judgment, except (1) an interlocutory judgment. . .

An interlocutory order is one which does not finally determine the rights of the parties. Thus, "an order entered prior to such final determination is interlocutory only and no appeal lies from such order." **Draus v. Alfred M. Lewis, Inc.** (1968) 261 Cal.App.2d 485, 489. Put another way, appeals which have been taken before entry of final judgment are premature and must be dismissed. **Lauderdale v. U & I Equipment Co.**, (1969) 271 Cal.App.2d 140, 143.

III. IN THE INSTANT CASE, THE JULY 6, 1984 ORDER IS INTERLOCUTORY AND THIS APPEAL MUST BE DISMISSED.

The July 6, 1984 Order is nothing more than a sanction for refusing to make discovery. Plaintiff has refused to obey the discovery provisions of the Code of Civil Procedure and a court order compelling him to answer respondents' interrogatories. As a result, plaintiff has been precluded from offering evidence at trial related to those interrogatories. The lawsuit however, has not been dismissed and continues to be unresolved. Inasmuch as the order does not constitute a final judgment in this action, it is, by definition, interlocutory.

According to the clear and unambiguous wording of Civil Code §904.1(a) and a long line of case authority which is typified by **Lauderdale v. U & I Equipment Co., supra**, this premature appeal from an Order which is clearly interlocutory must be dismissed.

Accord:

Hennigan v. Boren (1966) 43 Cal.App.2d 810, 816 ("Where an appeal is taken from a non-appealable order, the reviewing court has no alternative except to dismiss the appeal.")

Lemaire v. All City Employees Assn. (1973) 35 Cal.App.3d 106, 110 ("Once determining that the Orders appealed from are non-appealable, we lack

jurisdiction. . .It is the duty of the court, on its own motion, to dismiss an appeal from a non-appealable order.")

CONCLUSION

For all the foregoing reasons, it is respectfully urged that this motion to dismiss the appeal be granted.

DATED: December 7, 1984

Respectfully submitted,

O'FLAHERTY, ABRAHAMS & CARL

By: _____

PETER ABRAHAMS

Attorneys for Defendants and Respondents THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; ROBERT WOLFE, M.D.; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D.; and IRVIN WHEELER, M.D.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

BERNIECE P. LAMONT and
RONALD LAMONT,

Plaintiffs,

vs.

ROBERT WOLFE, M.D.; RICHARD STERTZ; CHARLES R. McELROY, M.D.; MICHAEL BRODSKY, M.D.; JOHN McAVERY, M.D.; IRVIN WHEELER, M.D.; EDMOND ROSALES, M.D.; UCLA HOSPITAL AND CLINICS; and DOES 1 through 40, inclusive,

Defendants.

No. WEC 53299

CERTIFICATION OF CLERK OF THE SUPERIOR COURT

I, JOHN J. CORCORAN, County Clerk and Clerk of the Superior Court of the State of California, for the County of Los Angeles do hereby certify:

That Ronald Lamont is the attorney of record for the Plaintiffs; and that O'Flaherty, Abrahams & Carl are the attorneys of record for the defendants.

That Complaint for Damages (1) Malpractice (2) Loss of Consortium was filed May 12, 1978. That relief prayed for is judgment against the defendant.

That Amended Complaint for Damages for Wrongful Death; Survival; and Negligence was filed February 13, 1981.

That a Copy of Minute Order entered July 6, 1984, Honorable L. J. Rittenband, Judge presiding is attached hereto:

That no Notice of Intention to Move for a New Trial has been filed.

That Notice of Appeal on the behalf of the Plaintiffs from the Minute Order entered July 6, 1984, was filed August 3, 1984.

That Notice to Prepare Clerk's Transcript was filed August 3, 1984.

That Clerk's Transcript was filed November 5, 1984.

That no Reporter's Transcript has been filed.

EXECUTED and Seal of said Superior Court affixed at Los Angeles, California this **29th** day of November, 1984.

JOHN J. CORCORAN, County Clerk and
Clerk of the Superior Court of
the State of California for the
County of Los Angeles

By: **C. Calvin,** Deputy

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing

and know its conttents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a

of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on 19 at California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____

Signature

ACKNOWLEDGEMENT OF RECEIPT OF DOCUMENT

(other than summons and complaint)

Received copy of document described as

on 19 .

_____

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1545 Wilshire Boulevard, Suite 302, Los Angeles, California 90017

On Dec. 10, 1984 I served the foregoing document described as RESPONDENT'S MOTION TO DISMISS APPEAL on all of the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fuily prepaid in the United States mail at: Los Angeles, California, addressed as follows:

Ronald Lamont
11734 Wilshire Boulevard
No. C-810
Los Angeles, CA 90025

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee. Executed on Dec. 10, 1984 at Los Angeles, California.

(State) I declare under penalty of perjury under

the laws of the State of California that the above is true and correct.

_____

LUCI BENAVIDEZ

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 4075 Agate Street, Riverside, California, 92509.

On April 30, 1985, I served the within PETITION FOR WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in each of three (3) sealed envelopes, with postage thereon fully prepaid, in the United States mail at San Bernardino, California, addressed as follows:

David A. Prestholt, Esq.
O'Flaherty, Abrahams & Carl
1545 Wilshire Blvd., Suite 302
Los Angeles, CA 90017

Clerk, Court of Appeal
2nd Appellate District
3580 Wilshire Blvd., 3rd Floor
Los Angeles, CA 90010

Clerk of the Superior Court
County of Los Angeles
111 North Hill Street
Los Angeles, CA 90012

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on April 30, 1985, at Riverside, California.

_____

JACK GALLAGHER